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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

IN RE WAL-MART WAGE AND HOUR
EMPLOYMENT PRACTICE LITIGATION

MDL 1735

2:06-CV-00225-PMP-PAL
(BASE FILE)

THIS DOCUMENT RELATES TO:

ALL ACTIONS EXCEPT KING v.

WAL-MART STORES, INC., CASE NO.

07-1486-WY

**PLAINTIFFS' OBJECTION TO CAROLYN BEASLEY-BURTON'S MOTION TO
REQUIRE BY OBJECTORS GAONA, SWIFT, ANDREWS, AND MADDOX
AND THEIR ATTORNEYS TO POST APPEAL BONDS
AND SEEKING ANY OTHER RELIEF TO PROTECT THE CLASS**

Now Come the Plaintiffs through their undersigned counsel to object to the bond request filed by Carolyn Beasley-Burton of the Mills Firm purportedly on their behalf. *See* Docket no. 536, Plaintiffs' Memo in Support of Motion to Require Objectors Gaona, Swift, Andrews and Maddox and Their Attorneys to Post an Appeal Bond and Seeking Any Other Relief to Protect the Class (hereafter, "Beasley-Burton Bond Memo"), December 18, 2009. Although captioned as Plaintiff's request for bond, no other Plaintiffs' counsel reviewed the submission, were requested to join the submission nor did in fact join in the submission.¹

Of the original persons deemed to have objected to the Settlement, only four remain in play: Jessica Gaona, Stephanie Swift, Deborah Maddox, and Fatima Andrews. Plaintiffs have filed individual bond requests as to two objectors, Gaona and Maddox. *See* Docket nos. 540-541, Motion for Appeal Bond for Objector Jessica Gaona and supporting Memorandum, December 21, 2009; and Docket nos. 549-550, Motion for Appeal Bond for Objector Deborah Maddox and supporting Memorandum, December 29, 2009. Plaintiffs incorporate by them by reference the facts here. *See Id.* Plaintiffs object to the Beasley-Burton Bond Memo on the basis that it: 1) contains errors of law; 2) is deficient in relevant facts; and 3) is largely supported through the emphasis of irrelevant argument.²

Plaintiffs will place on file for bond requests for the remaining two Objectors, Stephanie Swift and Fatima Andrews, on file within the next seven (7) days.³

¹ This includes Co-Lead counsel, Robert Bonsignore. Unfortunately this is *at least* the third time Ms. Beasley of the Mills firm has unilaterally acted in a way that detrimentally harms the class or places them at risk of harm. All attempts to stop this unacceptable practice including tolerance and the recommendation of serious consequences have been wholly unsuccessful. Beasley-Burton's bizarre and counterproductive actions violate Pre-Trial Order Number 1 (hereafter, PTO 1) (Docket no. 8, March 8, 2006) and Pre-Trial Order Number 2 (hereafter, PTO 2) (Docket no. 42, April 25, 2006). PTO 1 states, "The Court wishes to express clearly its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. *The Manual for Complex Litigation*, Fourth at section 10.21 captures the spirit in these terms: 'The added demands and burdens of complex litigation place a premium on attorney professionalism and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorney's obligations as officers of the court.' Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the court is confident that this objective will be achieved without judicial intervention." PTO 1 at 1.

² These have been described in great detail in Plaintiffs motions Plaintiffs' motions, Docket nos. 541-542, Motion for Appeal Bond for Objector Jessica Gaona and supporting Memorandum, December 21, 2009; and Docket nos. 549-550, Motion for Appeal Bond for Objector Deborah Maddox and supporting Memorandum, December 29, 2009.

³ Plaintiffs are waiting for documentation from third parties.

1 Plaintiffs also object to the Beasley-Burton Bond Memo because it provides additional
2 basis for appeal and the appeal of the Settlement does not serve the best interests of the class. In
3 the first place, Beasley-Burton's submissions run afoul of the holding in the *Azizian* case.
4 *Azizian v. Federated Dept. Stores*, 499 F.3d 950, 958 (9th Cir. 2007). *See* Beasley-Burton Bond
5 Memo. *Azizian* held that, "the term 'costs on appeal' in *Rule 7* includes all expenses defined as
6 'costs' by an applicable fee-shifting statute, including attorney's fees." *Id.* at 958 (internal
7 citations omitted). "The FLSA statute defines attorney's fees separately from costs. 29 U.S.C. §
8 216(b)." *Hayworth v. Nevada*, 56 F.3d 1048, 1051 (9th Cir. 1995). Despite this, Beasley-Burton
9 requests attorney's fees from the fee shifting provision in FLSA. While individual state laws
10 contained in the Consolidated Amended Complaint may allow for fee shifting to be included as
11 costs on a state by state basis, FLSA clearly precludes it. Moreover, such a possibility is purely
12 academic as Beasley-Burton made no attempt analyze or cite to those state law claims.

13 Collectively, the undersigned counsels request this Court to adopt a conservative view
14 and assess the bond on pure and solid legal footing. It is worth noting that it is well known
15 among the practicing class action bar that the goal of Professional Objectors is to obtain some
16 appealable issue and to move the action into the Appellate Court system, where it will
17 presumably languish at best until the professional objectors are paid off, or at worst, until the
18 appellate process runs its course after several years of delay. In light of this reality, we oppose
19 any effort that results in giving the professional objectors another reason to appeal. While the
20 undersigned counsel made a record for the appeals court to review, they did not ask the District
21 Court to rely on prior bad conduct or any of the other considerations that run a foul of *Azizian*.

22 Additionally, Beasley-Burton's Bond Memo discusses the vexatious conduct of
23 Professional Objectors. *See* Beasley-Burton Bond Motion at 2-10. This issue is distinguished in
24 Plaintiffs' filings because it is recognized as being an appropriate issue for review by the Appeals
25 Court in accordance to *Azizian*. *See* Docket no. 542, Memorandum in Support of Motion for
26 Appeal Bond for Objector Jessica Gaona and supporting Memorandum, December 21, 2009 at
27
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32-33; and Docket no. 550, Motion for Appeal Bond for Objector Deborah Maddox and supporting Memorandum, December 29, 2009, at 42-43.

The Beasley-Burton Bond Memo is deficient in relevant facts. Also, the submission clumps all objectors together and does not account for the fact they are expressly all independent of each other and not working together. *See* Beasley-Burton Bond Memo. It is the Plaintiffs understanding that the objectors are separate, should be treated separately and are not working together.

Further, the Beasley-Burton Bond Memo is largely supported through the emphasis of irrelevant argument.⁴ As indicated above, the Beasley-Burton Bond Memo contains errors of law, therefore, the supporting argumentation is not only irrelevant but inapplicable. Further, it lacks the expert evidentiary foundation required to support the assessment of a bond. This could have been avoided had Beasley-Burton discussed the contents of her submission, circulated a draft, or advised a single class counsel or her Co-Lead Counsel in advance of placing her request for the assessment of a bond on file.

Finally, Plaintiffs object because the Beasley-Burton Bond Memo provides additional basis for appeal. Beasley-Burton requests a bond be valued on costs that will certainly be appealed further delaying final resolution. In making the request here, Plaintiffs have attempted to make the offer conservative based on what is reasonably available to them.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order against the Beasley-Burton Bond Memo and grant Plaintiffs' Motions, Docket nos. 540-541, Motion for Appeal Bond for Objector Jessica Gaona and supporting Memorandum, December 21, 2009; and Docket nos. 549-550, Motion for Appeal Bond for Objector Deborah Maddox and supporting Memorandum, December 29, 2009; and for such other relief as the Court deems just and proper.

⁴ These have been described in great detail in Plaintiffs motions Plaintiffs' motions, Docket nos. 540-541, Motion for Appeal Bond for Objector Jessica Gaona and supporting Memorandum, December 21, 2009; and Docket nos.

Dated: January 8, 2010

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2010, a copy of the foregoing ***PLAINTIFFS' OBJECTION TO CAROLYN BEASLEY-BURTON'S MOTION TO REQUIRE BY OBJECTORS GAONA, SWIFT, ANDREWS, AND MADDOX AND THEIR ATTORNEYS TO POST APPEAL BONDS AND SEEKING ANY OTHER RELIEF TO PROTECT THE CLASS*** was filed electronically [and served by mail on anyone unable to accept electronic filing]. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system [or by mail to anyone unable to accept electronic filing]. Parties may access this filing through the Court's system.

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